

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO MAGAT,

Defendant.

Case No. [14-cr-00627-SI-1](#)

**ORDER DENYING DEFENDANT  
ERNESTO MAGAT'S MOTION FOR  
RECONSIDERATION**

Re: Dkt. No. 355

Defendant Ernesto Magat has filed a motion for reconsideration of this Court's June 30, 2020 Order denying his motion for compassionate release. In that order, the Court noted that defendant is 38 years old and that, aside from a diagnosis of sleep apnea, Mr. Magat does not complain of any serious health condition. The Court found that Mr. Magat had not shown that his sleep apnea is "a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he . . . is not expected to recover." *See* U.S.S.G. § 1B1.13 cmt. N.1(A)(ii)(I); *see also* Order Denying Renewed Motion to Modify Sentence, *United States v. Taylor*, Case No. 17-cr-00191-JST (N.D. Cal. June 24, 2020) (denying motion filed by 57-year-old defendant with sleep apnea and high cholesterol because, *inter alia*, these conditions "do not appear on the CDC's list of underlying medical conditions that create a higher risk") (filed at Dkt. No. 352, Ex. A).

Mr. Magat's motion for reconsideration states that FCI Mendota now has several reported cases of COVID-19, and he states that the conditions at the prison are such that it is impossible to engage in social distancing or proper hygiene. He also emphasizes that he has had a clean disciplinary record in prison, and he again mentions his sleep apnea and that he sleeps with a CPAP machine to help him breathe at night.

1 The Court remains sympathetic to the concerns raised by Mr. Magat regarding the potential  
2 for exposure at FCI Mendota. However, the record does not reflect that defendant is currently  
3 “suffering from a serious physical or medical condition . . . that substantially diminishes the ability  
4 of the defendant to provide self-care within the environment of a correctional facility and from  
5 which he . . . is not expected to recover.” *See* U.S.S.G. § 1B1.13 cmt. N.1(A)(ii)(I). Accordingly,  
6 defendant’s motion is DENIED without prejudice to renewal in the event Mr. Magat’s health  
7 significantly deteriorates.

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9 **IT IS SO ORDERED.**

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11 Dated: July 24, 2020



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SUSAN ILLSTON  
United States District Judge